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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,354	07/18/2003	William David Dunfee	DCS-9142	5037
34500	7590	09/09/2005	EXAMINER	
DADE BEHRING INC. LEGAL DEPARTMENT 1717 DEERFIELD ROAD DEERFIELD, IL 60015			CROSS, LATOYA I	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

T.P

Office Action Summary	Application No. 10/623,354	Applicant(s) DUNFEE, WILLIAM DAVID	
	Examiner LaToya I. Cross	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to Applicants' arguments submitted on June 27, 2005. Claims 1-6 remain pending in the application.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 5,827, 744 to Fose et al.

Fose et al teach an apparatus for cleaning a liquid dispensing probe. The apparatus comprises a sample arm (24) mounted to a rotatable shaft. The sample arm draws sample from a sample container (14) and deposits the sample within a reaction cuvette (18). This aspirating and dispensing capability is provided by pump means (27). The apparatus further comprises a horizontal drive (32) for rotating sample carousel (12) and a vertical drive (34) for moving sample arm (24) into alignment with sample probe (30). A wash resource (26) is provided to clean sample probe (30). The wash resource (cleansing module) comprises a wash body (40) having a vertically oriented bore forming a washing chamber (60). The wash body (40) has a pair of vacuum tubings (42) connected to an air supply and a pair of liquid solution tubings (44) connected to a source of wash solution, as recited in claim 4.

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3. Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 5,531,960 to Zelinka.

Zelinka teaches an automated analyzer a robotic sampling system (12) and a rinse reservoir (13). The robotic sampling system includes a robotic drive system (23) which moves a robotic arm (21). A horizontal drive motor (29) moves the robotic arm along horizontal drive track (23). A vertical drive motor (37) moves the robotic arm along the vertical drive track. The vertical drive comprises linear actuators in combination with an upper stop switch (39) and a lower stop switch (41). The switches allow the robotic arm to remain in a particular location. The rinse reservoir of Zelinka comprises a cleaning means for cleaning and rinsing the probes. A wash pump (45) is actuated to pump distilled water or other cleaning solution from the rinse reservoir through pump inlet (46). The cleaning solution is sprayed onto the probe tips and the used cleaning fluid falls into a drain basin (52) and empties into a drain trough/waste reservoir (53).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Fose et al or Zelinka in view of US patent 5347878 to Suovaniemi.

The disclosures of Fose et al and Zelinka are described above. Neither reference teaches a locking mechanism.

Suovaniemi teaches a pipette assembly with a locking mechanism. When the pipette is in aspirating or dispensing position, the locking mechanism locks that position to assure that the pipette is not inadvertently adjusted from its position. It would have been obvious to one of ordinary skill in the art to incorporate a locking mechanism into the sampling arms of Fose et al or Zelinka to avoid any mishaps in aspirating or dispensing the sample fluid. Such would prevent cross contamination of the sample and reagents and in doing so, provide more accurate analysis results.

Response to Arguments

7. Applicant's arguments filed June 27, 2005 have been fully considered but they are not persuasive. With respect to the anticipation rejections over Fose et al and Zelinka, Applicants' argument is the same for both rejections. Applicants argue that neither reference teaches a vertical drive "adapted to drive a probe through a closure". The language "adapted to" has been interpreted by the Examiner as meaning "capable of". Both Fose et al and Zelinka teach vertical drives in their sampling devices. In Fose et al, the vertical drive is disclosed as moving the sample arm into alignment with the sample probe. Similarly in Zelinka, the vertical drive is disclosed as positioning the robotic arm into place. Applicants' argument that the references fail to teach that the vertical drives are "adapted to drive a probe through a closure" is

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not persuasive because both references indeed teach vertical drives capable of driving a robotic arm in a vertical direction. Thus, the vertical drives are also capable of driving a probe through a closure. The claim language does not require that either a probe or closure is present. The claims, given their broadest reasonable interpretation, require the presence of a horizontal drive, a vertical drive, a pump module and a cleaning module, all of which are taught by both Fose et al and Zelinka. Applicants have attempted to claim their apparatus in terms of how it operates (how it functions). However, in claims directed to an apparatus, the claims are limited only by their structure and not by their function. MPEP 2114 states that apparatus claims cover what a device is, not what a device does. It is the position of the Examiner, that the vertical drives taught by Fose et al and Zelinka et al are capable of driving any type of mechanism, including probes.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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M. T. Cole
Monique T. Cole
Primary Examiner